THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16432 OF 2005

Between:

M/s Harini Restaurant & Bar,

A proprietory concern, represented by

its proprietor, K. Harish Kumar. .. Petitioner.

And

Commissioner, Prohibition & Excise,

Government of A.P., Hyderabad and four others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16432 OF 2005

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ORDER:

The petitioner is a licencee in Form 2B for the sale of Indian Liquor/Foreign Liquor by bar to be consumed on the premises for the year 2005-06 in the premises bearing Door No.3/C Karkhana, Secunderabad.

This Writ Petition is filed aggrieved by the action of the respondents 1 to 3 in granting licence in Form-A4 in favour of the 5th respondent for sale of liquor by shop in the premises bearing Door No.201/B Vasavinagar, Secunderabad as arbitrary and illegal.

In the affidavit filed in support of the Writ Petition it is pleaded as under:

The 5th respondent, was declared as the successful bidder in respect of the privilege of sale of Indian Liquor/Foreign Liquor by shop in Ward No.3 of Secunderabad Cantonment Board. However, he has selected premises bearing Door No.201/B, Vasavinagar, misrepresenting that the same falls in Ward No.3 of Secunderabad Cantonment. The petitioner alleges that in fact, the said premises comes within Ward No.4 of Secunderabad Cantonment Board as per the Electoral Rolls of the year 2001, but the respondents 1 to 3 have erroneously granted the licence without ascertaining the location of the premises selected by the 5th respondent. Hence, this Writ Petition.

The Prohibition & Excise Superintendent in his counter-affidavit filed on behalf of respondents 1 to 3 explained that after the 5th respondent was declared as the successful bidder, on receipt of the application from him for issuance of licence, papers submitted by him were scrutinized thoroughly with reference to the Electoral Roll, 2001 prepared by the Secunderabad Cantonment Board. Having found that the premises proposed for the location of the shop i.e., premises bearing No.201/B, Karkhana Main Road falls in Ward No.3 of Secunderabad Cantonment Board, licence in Form A4 was issued to the 5th respondent. It is further explained that though Vasavinagar Colony forms part of Ward No.4, as per the details figured at Sl. Nos.26, 27 and 28, no specific house numbers were mentioned, and therefore, it cannot be taken that the premises in question falls in Ward No.4. It is further stated that the petitioner had obtained IL 2B licence subsequently on 8.07.2005 and the present Writ Petition is filed only due to trade rivalry, and therefore, the Writ Petition is misconceived and liable to be dismissed.

A separate counter-affidavit has been filed by 5th respondent on the same lines stating that in pursuance of the licence granted, he has been carrying on business in the premises bearing door No.201/B, Karkhana, Secunderabad, which falls in Ward No.3, but not in Ward No.4.

However, the Executive Officer, Secunderabad Cantonment Board filed a counter-affidavit on behalf of respondent No.4, stating that the shop being run by the 5th respondent bearing Door No.201/B, Vasavinagar Colony, Vasavinagar, Opposite Karkhana Bus Station, Secunderabad Cantonment Board, is situated in Ward No.4 as per the extract of the Electoral Roll, 2001.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents 1 to 3 and the learned counsel for the 5th respondent.

There can be no dispute about the legal position that under the provisions of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, leases have to be granted by inviting sealed tenders area/locality-wise. Admittedly, the 5th respondent was granted lease by way of auction in respect of Ward No.3, and he was also granted a licence by the competent authority on being satisfied that the premises bearing Door No.201/B, Karkhana Main Road falls within Ward No.3 of the Secunderabad Cantonment Board. However, the petitioner now raises a dispute as to the location of the premises alleging that the premises bearing Door No.201/B actually falls within Ward No.4, but not Ward No.3.

A copy of the abstract of the Electoral Roll, 2001 of Secunderabad Cantonment Board placed before this Court shows that house No.191 to House No.287 of Karkhana falls within ward No.3 of Secunderabad Cantonment Board. In Form A4 licence granted in favour of the 5th respondent the premises was clearly described as the premises bearing Door No.201/B, Karkhana Main Road, Secunderabad Cantonment Board. However, the petitioner contends that the said premises bearing Door No.201/B forms part of Vasavinagar, Vasavinagar Colony, which falls in Ward No.4 of Secunderabad Cantonment board. The petitioner alleges that the 5th respondent had falsely represented that the premises bearing Door No.201/B falls within Ward No.3, whereas it is actually located in Ward No.4.

Though the copy of the extract of the Electoral Roll, 2001 of Ward No.4, Secunderabad Cantonment Board shows that Vasavinagar Colony falls within Ward No.4, nothing has been placed before this Court to show that house No.201/B is situated in Vasavinagar Colony. The abstract of the Electoral roll, 2001 of Ward No.4 does not contain any house numbers. The petitioner in support of his contention has relied upon a rough plan showing the division of Ward Nos.3 and 4 of Secunderabad Cantonment, in which it was shown that Vasavinagar Colony, including door No.201/B falls in Ward No.4. Even the counter-affidavit filed by the Executive Officer of the Secunderabad Cantonment is not clear on this aspect. In the absence of any clear material, this Court cannot record a finding on such a disputed question of fact, and therefore, no *Mandamus* can be issued as prayed for. From the affidavit filed by the petitioner it also appears that the petitioner never raised any such objection before the licensing authority and approached this Court straight away under Article 226 of the Constitution of India.

For the aforesaid reasons, though I am not inclined to issue a Writ of Mandamus as prayed for, the Writ Petition is disposed of granting liberty to the petitioner to make an appropriate representation before the licensing authority producing all the relevant supporting material to substantiate his allegation. If any such complaint is made the licensing authority shall consider the same and pass appropriate orders in accordance with law after affording due opportunity to both the writ petitioner and the 5th respondent.

The Writ Petition is accordingly disposed of. No costs.

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(G. ROHINI, J.)

20th February, 2006.

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